

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DYSON TECHNOLOGY LIMITED and)	
DYSON, INC.,)	
)	
Plaintiffs,)	
v.)	C.A. No. 05-434-GMS
)	
MAYTAG CORPORATION,)	REDACTED –
)	PUBLIC VERSION
Defendant.)	

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION *IN LIMINE* NO.5
TO EXCLUDE EVIDENCE OF MAYTAG'S IN-HOME TESTS**

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Dated: April 26, 2007

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Excerpts from Transcript of February 15, 2007 Deposition of John Balough.....	A
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This contention is absurd. By logical extension, Maytag's experts could opine that Dyson vacuum cleaners lose suction based on their performance after vacuuming a large quantity of wet cement or after the vacuum was thrown off the roof of a building. Dyson does not claim its cleaners are indestructible (and, indeed, any such claim would be unactionable puffery). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] They are unreliable and should be excluded.

Second, although Maytag contends that “novel methodologies” may be admissible (Opp. at 4), Balough’s in-home tests were not merely “novel”; they were poorly run and lacked any indicia of objective protocols or good procedures. Maytag does not argue otherwise, and, in fact, there is nothing Maytag can say. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Maytag has presented no evidence to rebut the overwhelming indications of shoddy test execution, and the results should be excluded as unreliable.

Third, Maytag’s suggestion that it is excused from offering affirmative evidence of reliability because its in-home tests are “the best we’ve got” is legally frivolous.² [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] What the law requires is a preponderance of the evidence that Maytag's tests are reliable. Maytag cites no such evidence, and none exists.

For all the reasons stated herein, and for the reasons set forth in Dyson's Opening Brief, Dyson's motion to exclude any evidence relating to Maytag's in-home tests should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Monté T. Squire, hereby certify that on May 3, 2007, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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I further certify that on May 3, 2007, I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and on the following in the manner indicated:

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